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this new law takes effect for an offense committed before it takes effect."

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 3278; Dec. Dig. § 1207.\* 12 Va.-W. Va. Enc. Dig. 143.]

Error to Circuit Court, Lancaster County.

Mrs. William Conaway was convicted of murder, and brings error. Reversed and remanded.

*R. O. Norris, Jr.*, of Lively, and *T. J. Downing*, of Lancaster, for plaintiff in error.

*John G. Pollard, Atty. Gen.*, for the Commonwealth.

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KANTER *v.* M. HOFHEIMER & CO., Inc.

March 16, 1916.

[88 S. E. 60.]

**1. Frauds, Statute of (§ 23 (3)\*)—Promise to Pay the Debt of Another.**—Where defendant himself purchased goods, plaintiff refusing to sell to a corporation of which defendant was the principal stockholder, defendant's promise to pay for the goods, though he delivered them to the corporation, is not within the statute of frauds.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. §§ 18, 19; Dec. Dig. § 23 (3).\* 6 Va.-W. Va. Enc. Dig. 518.]

**2. Appeal and Error (§ 1002\*)—Review—Verdict.**—A verdict of the jury on conflicting evidence, being supported by evidence, is conclusive on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3935-3937; Dec. Dig. § 1002.\* 1 Va.-W. Va. Enc. Dig. 620.]

Error to Hustings Court of Portsmouth.

Action by M. Hofheimer & Co., Incorporated, against Israel Kanter. There was judgment for plaintiff, and defendant brings error. Affirmed.

*R. R. Hicks*, of Norfolk, for plaintiff in error.

*S. M. Brandt*, of Norfolk, for defendant in error.

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CARLTON *et al.* *v.* BOUDAR.

March 16, 1916.

[88 S. E. 174.]

**1. Parties (§ 75 (7)\*)—Misjoinder—Method of Raising Question.**—Under Code 1904, § 3258a, misjoinder of parties cannot be taken ad-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

vantage of by demurrer, but must be raised by motion to abate the action as to the parties improperly joined.

[Ed. Note.—For other cases, see Parties, Cent. Dig. § 115; Dec. Dig. § 75 (7); Pleading, Cent. Dig. § 494.\* 10 Va.-W. Va. Enc. Dig. 756.]

**2. Torts (§ 22\*)—Tort-feasors—Liability.**—Where injuries caused by the concurrent wrongful acts of two persons are plainly separable, so that the damage caused by each can be distinguished, each is liable only for the damage which he caused, but where the injuries cannot be separated, both are jointly and severally liable, though contribution by the wrongdoers cannot be enforced.

[Ed. Note.—For other cases, see Torts, Cent. Dig. §§ 29, 31; Dec. Dig. § 22.\* 13 Va.-W. Va. Enc. Dig. 212.]

**3. Carriers (§ 4\*)—"Common Carriers"—Who Are.**—Where defendant transfer company, which was chartered to engage in the business of the transportation and carriage of passengers, and their baggage, and other persons and goods, wares, and merchandise, between the various stations and other points in the city and counties, held itself out as ready to receive and transport all who applied for carriage and were ready to pay the compensation demanded, it was a common carrier with respect to its taxicab business, defendant undertaking to carry persons and property generally, offering its services to all.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 1, 462-478; Dec. Dig. § 4.\* 2 Va.-W. Va. Enc. Dig. 673.]

For other definitions, see Words and Phrases, First and Second Series, Common Carrier.]

**4. Municipal Corporations (§ 705 (12)\*)—Injury by Taxicab—Actions—Joinder.**—Where plaintiff while riding as a passenger in a public taxicab was injured in a collision between the taxicab and another's motor car, and both the driver of the taxicab and of the motor car were negligent, the operator of the taxicab and the owner of the motor car may be joined, notwithstanding before accident they owed plaintiff different degrees of care, one owing him the highest degree of practical care and the other ordinary care, for the collision was the result of the joint negligence of both.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1515; Dec. Dig. § 705 (12).\* 10 Va.-W. Va. Enc. Dig. 254.]

**5. Municipal Corporations (§ 78\*)—Ordinances—Validity.**—In case of a conflict, a municipal ordinance must yield to a state statute.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 182; Dec. Dig. § 78.\* 10 Va.-W. Va. Enc. Dig. 611.]

**6. Trial (§ 174\*)—Instructions—Refusal.**—An instruction directing

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a verdict for defendant under given circumstances is properly refused where it presents only a partial view of the evidence.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 398; Dec. Dig. § 174.\* 13 Va.-W. Va. Enc. Dig. 627.]

**7. Municipal Corporations (§ 705 (12)\*)—Street—Actions—Injuries.**

In an action for injuries resulting from a collision between the taxicab in which plaintiff was riding and defendant's motor car, the fact that the taxicab was not lighted in accordance with the state statute will not excuse the owner of the motor car, where the taxicab carried lights rendering it visible for nearly a block, and the driver of the motor car was negligent; the failure of the taxicab company to comply with the law not being the proximate cause of the injury.

[Ed. Note.—For other cases, see Municipal Corporations, Cent. Dig. § 1515; Dec. Dig. § 705 (12).\* 10 Va.-W. Va. Enc. Dig. 218.]

**8. Trial (§ 140 (1)\*)—Province of Jury—Credibility of Witnesses.**

—The credibility of witnesses is for the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 334; Dec. Dig. § 140 (1).\* 13 Va.-W. Va. Enc. Dig. 974.]

Error to Law and Equity Court of City of Richmond.

Action by Thomas Boudar against the Richmond Transfer Company and E. S. Carlton. There was a judgment for plaintiff, and defendants bring error. Affirmed.

*R. H. Talley* and *S. S. P. Patteson*, both of Richmond, for plaintiffs in error.

*Smith & Gordon*, of Richmond, for defendant in error.

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ADAMS GRAIN & PROVISION CO. *v.* CHESAPEAKE & O.  
RY. CO.

March 16, 1916.

[88 S. E. 171.]

**1. Landlord and Tenant (§ 150 (1)\*)—Duty to Repair—Common-Law Rights.**—At common law, in the absence of express covenants to the contrary, the lessor is under no obligation to keep the premises in repair, and the lessee takes them as he finds them.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. §§ 536, 538, 544, 546, 548, 556; Dec. Dig. § 150 (1).\* 9 Va.-W. Va. Enc. Dig. 159.]

**2. Landlord and Tenant (§ 166 (3)\*)—Duty to Repair—Common-Law Rights.**—Where the landlord leases only a portion of his premises, and through such portion runs a large pipe supplying the remainder of the premises wholly controlled by the landlord with water

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.